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MAR 05 2004

In re Application of
Cantagallo
Application No. 10/674,217
Filed: September 30, 2003
Attorney Docket No. 9400-54

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed January 22, 2004, to accord the above-identified application a filing date of September 29, 2003, instead of September 30, 2003.

The petition is **granted**.

Petitioner alleges the application was mailed by Express Mail on September 29, 2003. In support, petitioner has supplied a copy of the Express Mail label. The label does not include a date-in and the stamp is illegible. Petitioner has also submitted a printout from the USPS web site which indicates the package was received by the USPS at 5:27pm on September 29, 2003.

37 CFR 1.10(d) states:

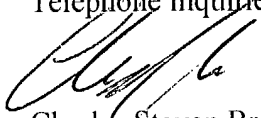
Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

All of the above requirements have been met. Therefore, the application will be accorded a filing date of September 29, 2003.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of September 29, 2003.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

A handwritten signature in black ink, appearing to read 'Charles Brantley', is positioned above the printed name.

Charles Steven Brantley
Petitions Attorney
Office of Petitions